85-1677

NO. _____

Supreme Court, U.S.
FILED
APR 10 1986
JOSEPH F. SPANIOL, JR.
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1986

Doris Johnson,

Petitioner,

v.

Alabama Agricultural and Mechanical University, et al,

Respondents,

On Writ for Certiorari to the Supreme Court of Alabama

Petition for Certiorari

James M. Gaines
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108 South Side Square
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QUESTION PRESENTED FOR REVIEW

Were teacher's due process rights violated where following a pretermination hearing, university president considered additional evidence against teacher without giving her notice and an opportunity to respond before dismissing her from her tenured teaching position?

PARTIES TO THE PROCEEDING BELOW

The parties to the proceeding in the Circuit Court of Madison County, Alabama and in the Supreme Court of Alabama were ALABAMA AGRICULTURAL AND MECHANICAL UNIVERSITY; R. D. MORRISON as President of Alabama A & M University; The Board of Trustees of Alabama A & M University in Their Official Capacity: JAMES W. COLEMAN, MAMIE L. FOSTER, ROBERT T. HUGHES, ELEANOR V. INGE, W. TROY MASSEY, JOSEPH C. MOQUIN, EDDIE G. PLAYER, FRANKIE FIELDS SMITH, SPENCER THOMAS, PAUL THOMPSON, PAUL DUDLEY WHITE and JEFFREY MARTIN.

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1986

Doris Johnson,
Petitioner,

v.

Alabama Agricultural and Mechanical University,

Respondent,

Petition for Certiorari--Due Process Claim

OPINION BELOW

The opinion of the Supreme Court of Alabama (App. A, infra, pp. A-1 to A-24) is reported as Johnson v. Ala. Agr. & Mechanical University, 481 So.2d 336 (Ala. 1985). The decision of the

Circuit Court of Madison County, Alabama (App. B, infra, pp. B-1 to B-2) is unreported.

JURISDICTION

The opinion of the Supreme Court of Alabama was entered on October 4, 1985 and rehearing was denied on January 10, 1986. The jurisdiction of this Court is invoked under 28 U.S.C. 1257 (3)

CONSTITUTIONAL PROVISION INVOLVED

The pertinent provision of the United States Constitution (the Fourteenth Amendment) is set forth in Appendix C, infra, p. C-1.

STATEMENT OF THE CASE

Petitioner was a tenured member of Alabama A & M University's faculty. Her relationship with the school was governed by a faculty handbook which provided the following procedure for terminating a tenured faculty member:

> "1. The employee will be advised in writing of the cause of causes of his or her proposed suspension or termination."
>
> "2. The employee will be advised of the names of witnesses and nature of testimony anticipated."
>
> "3. The employee will be given a meaningful opportunity to be heard in his/her own behalf and to present witnesses to the circumstances in question."
>
> "4. The President of the University will appoint a tribunal who posses [sic] some academic expertise and impartiality."

"5. The tribunal will make a determination of the culpability charged; if guilt is found on any charge, they will so advise the President along with recommendations for action to be take. The President's decision will be final."

Petitioner was informed of the proposed termination by a letter from the university's vice president for academic affairs. The letter stated that Petitioner had been charged with insubordination, disrespect for the dean of her department, refusal to follow approved procedures in addressing department affairs and inability to cooperate with faculty and students. Petitioner was not allowed to have legal representation during the hearing. The letter stated that the

associate dean of Petitioner's department would present the case against her, and he gave a list of witnesses and it stated which of the charges each witness's testimony would relate to.

A hearing committee was chosen, and it conducted a four hour and fifteen minute inquiry into the charges. The panel then rendered a written decision finding Petitioner guilty of each charge. However, the panel recognized that the Petitioner "...over the past fourteen years has made significant contribution to the Division of Home Economics" and that "...students...have held her in high esteem." Moreover, the

panel found that the Petitioner "...is active in numerous community activities and organizations and tends [sic] to work hard for causes that she believes in." In addition, the panel stated that "We have no solid evidence to support academic incompetence...the (Petitioner) is qualified in the areas in which she teaches." The panel concluded by stating that "...the major problem appears to be an inability on the part of the (Petitioner) to recognize and solve the problem of cooperating and respecting those in authority as well as persons under her supervision. If she continues in this fashion, we strongly

believe that the Division of Home Economics is entitled to relief."

The committee's findings were forwarded to the president, who presented the question of what action to take on the hearing committee's finding of guilt to a committee called the "Executive Officers for Planning" (E.O.P.) The E.O.P. is a committee charged with advising the president about goals, policies, procedures, and regulations for the University. The president, who is chairman of the committee, is not bound by the committee's decisions. The E.O.P. sent Petitioner a letter stating that it had decided to place her on "strict

probation" and that she was to "cease and desist from" the behavior which led to the charges. The president testified at trial that the letter constituted his decision.

Following the E.O.P.'s letter to Petitioner, the associate dean who served as prosecutor wrote the president a letter requesting a reconsideration of the E.O.P.'s decision. The president then contacted Petitioner and asked her is she agreed with the E.O.P.'s decision, and she replied that she did not. When asked if she would like to appear before the E.O.P. and explain her position, Petitioner replied that she would. The associate dean was allowed

to make a written presentation to a new and expanded E.O.P. on January 31, 1983. The minutes of that meeting state that "based on an appeal presented by (the associate dean), to E.O.P. on January 31, 1983, E.O.P. hereby suspends (Petitioner), with pay, from all duties and responsibilities in the Department of Home Economics based on the fact that immediate relief, recommended by the hearing tribunal, was not given in the original E.O.P. decision. This action is effective February 4, 1983." The minutes further note that Petitioner was to be invited to appear before the E.O.P. on February 1, 1983.

The presentation made by the associate dean refers to conferences that had been held, to letters that had been written and to a prior probationary period "as summarized in a statement to the hearing tribunal and documented in (Petitioner's) personnel folder." The associate dean testified at trial that she presented no exhibits to E.O.P. Apparently, her reference to the file of Mrs. Johnson caused the university president to decide that he should further study the case. He did this by talking with other people ("you ask other people do you know [Petitioner]"), by joining the second E.O.P. in examining (a vice president's) file of

correspondence ("we looked back at Dr. Frazier's notes, where he had had correspondence back and forth with the person who was the supervisor over there, over Home Economics, and recommendations had been made and what Dr. Frazier had said about those recommendations and so forth") and by examining the history of the case (which came from "some of the correspondence in Dr. Frazier's office"). Dr. Frazier's notes, the correspondence, recommendations and what Dr. Frazier had said about those recommendations "and so forth" "had some bearing" on the university president's decision to change the status of petitioner from

probation to suspension with pay. In other testimony, the university president referred to "getting the whole case." In any event, the university president stated that "I don't think it was my responsibility to advise her of my search of the records," referring to his failure to advise the Petitioner that there was some evidence in addition to the hearing committee's evidence that he was considering. Petitioner testified that she was not advised of any charges against her arising from contents of the file in Dr. Frazier's office, nor was she given a right to cross-examine anyone as to

statements, notes, correspondence, recommendations, etc. in the file.

Petitioner was allowed to meet with the E.O.P. on February 1, 1983. At this meeting Petitioner made certain countercharges which E.O.P. requested she submit in writing. Petitioner responded as requested. On February 4, 1983, the university president sent Petitioner a letter stating that he had decided to postpone any action on the charges. The letter informed Petitioner that pending a final decision she was relieved of her duties with pay. The letter purported to take the place of the earlier letter from the E.O.P. On May 30, 1983, the president sent Johnson

a letter stating that he had decided the best interests of the university would be served by making the separation permanent. Petitioner was officially terminated as of May 31, 1983.

WHEN FEDERAL QUESTION RAISED

Petitioner brought suit in the Circuit Court of Madison County on June 14, 1983. Paragraph 5 and 13 of her complaint (App. D infra pp. D-1 to D-17) clearly assert her right to "Due process of law...pursuant to...the Fifth and Fourteenth Amendments of the U.S. Constitution."

The decision of the Circuit Court (App. B infra pp.B-1 to B-2) is unusually silent as to the basis of the Court's decision.

The due process argument was fully briefed by both sides in the subsequent appeal to the Alabama Supreme Court and

the Court specifically addressed the issue on its merits in its decision of October 4, 1985 (App. A infra pp. A-1 to A-24).

REASONS FOR GRANTING THE WRIT

In this case, the Supreme Court of Alabama has decided a federal due process question in direct conflict with a recent decision of this Court. In Cleveland Bd. of Educ. v. Laudermill, this Court addressed the essential requirements of due process for a tenured public employee. The Court stated that such an employee "is entitled to oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story." ____ U.S. at ____, 105 S.Ct. at 1495.

Petitioner was originally afforded these rights by a committee that recommended that she be placed on probation. Prior to the hearing Petitioner was advised of the charges, the names of witnesses against her and which witnesses were related to which charges. The recommendation of the committee was followed by the university president until the prosecuting faculty member requested a change in punishment. At this point, due process as defined by this Court broke down.

A differently constituted committee met again and received additional evidence against Petitioner. After that hearing Petitioner was allowed to

address the committee, but she was not notified of any additional evidence against her.

More importantly, the university president then conducted his own investigation without giving notice or an opportunity to respond to the Petitioner.

The president testified in court that this additional information "had some bearing" on his recommendation to change Petitioner's status from probation to suspended with pay. He further stated that "I don't think it was my responsibility to advise her of my search of the records."

If a university holds a pretermination hearing that comports with due process, may it then violate due process by considering additional evidence without giving the teacher either notice of the evidence or an opportunity to respond? To state the question is to answer it. It is ludicrous to think that by holding a "good" hearing that the university could then consider any information it wished, no matter how erroneous, without informing the Petitioner and hearing her side of the issue.

In contrast to the manner in which the Alabama courts handled this issue is a decision of a United States District

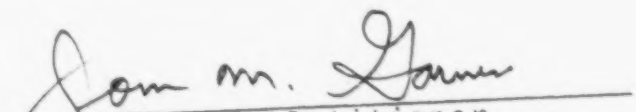
Court for the Middle District of Alabama. There the court held that a university academic professor was denied due process by discharging him without notifying him or allowing him to respond to certain evidence in his personnel file. Davis v. Alabama State University, 613 F.Supp. 134 (M.D.Ala. 1985).

It is submitted that the United States District Court has correctly interpreted the law that the Alabama Supreme Court has not.

CONCLUSION

The Court should review this case because there is a very clear conflict

between the decision of the court below and the law as enunciated by this Court. It is therefore, respectfully submitted that this petition for a writ of certiorari should be granted.



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THE STATE OF ALABAMA - - - - - -
JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

SPECIAL TERM, 1985

Doris Johnson

84-194 v.

Alabama Agricultural and Mechanical University

Appeal from Madison Circuit Court

FAULKNER, JUSTICE.

Doris Johnson filed an action against the Alabama Agricultural and Mechanical University, its president, and its trustees, seeking a declaratory judgment as to the validity of her removal from the faculty of that University. The trial court ruled that the plaintiff was not entitled to relief, and she appeals.

Johnson was a tenured member of the University's faculty. Her relationship with the school was governed by a faculty handbook, which provided the following procedure for terminating a tenured faculty member:

> "1. The employee will be advised in writing of the cause of causes of his or her proposed suspension or termination."
>
> "2. The employee will be advised of the names of witnesses and nature of testimony anticipated."
>
> "3. The employee will be given a meaningful opportunity to be heard in his/her own behalf and to present witnesses to the circumstances in question."
>
> "4. The President of the University will appoint a tribunal who posses [sic] some academic expertise and impartiality."

"5. The tribunal will make a determination of the culpability charged; if guilt is found on any charge, they will so advise the President along with recommendations for action to be take. The President's decision will be final."

Mrs. Johnson was informed of the proposed termination by a letter from the University's vice president for academic affairs. The letter stated that Johnson had been charged with insubordination, disrespect for the dean of her department, refusal to follow approved procedures in addressing department affairs, and inability to cooperate with faculty and students. It listed the names of five persons as prospective members of a hearing committee which would determine

Johnson's guilt or innocence of the charges. It informed Johnson that the president would choose three persons from among the names listed, unless Johnson voiced an objection to any of the prospective panel members by notification of the vice president's office. Although Johnson was allowed to present witnesses and cross-examine the University's witness, Johnson was not allowed to have legal representation during the hearing. The letter stated that the associate dean of Johnson's department would present the case against her; it gave a list of witnesses and it stated which of the charges each witness's testimony would relate to.

Johnson did not register objection to any of the prospective panel members. A hearing committee was chosen and it conducted a four-hour-and-fifteen-minute inquiry into the charges. The panel then rendered a written decision finding Johnson guilty of each charge. In light of Johnson's fourteen years of service to the University, the committee recommended that Johnson be allowed one more opportunity to correct the problems underlying the charges prior to terminating her.

The committee's findings were forwarded to the president, who presented the question of what action to take on the hearing committee's finding

of guilt to a committee called the "Executive Officers for Planning" (E.O.P.). The E.O.P. is a committee charged with advising the president about goals, policies, procedures, and regulations for the University. The president, who is chairman of the committee is not bound by the committee's decisions. He merely looks to it for advice. The E.O.P. sent Johnson a letter stating that it had decided to place her on "strict probation" and that she was to "cease and desist from" the behavior which led to the charges. The president testified that the letter constituted his decision.

Following the E.O.P.'s letter to Johnson, the associate dean of Johnson's department wrote the president a letter requesting a reconsideration of the E.O.P.'s decision. The president then contacted Johnson and asked her is she agreed with the E.O.P.'s decision, and she replied that she did not. When asked if she would like to appear before the E.O.P. and explain her position, Johnson replied that she would. Johnson and the assistant dean were allowed to appear before the E.O.P. on separate occasions.

After the E.O.P. reconsidered the case, the president sent Johnson a letter dated February 4, 1983, stating

that he had decided to postpone any action on the charges. The letter informed Johnson that pending a final decision she was relieved of her duties with pay. The letter purported to take the place of the earlier letter from the E.O.P.

On May 30, 1983, the president sent Johnson a letter stating that he had decided that the best interests of the University would be served by making the separation permanent. Johnson was officially terminated as of May 31, 1983.

On appeal Johnson argues that the University's policy of not allowing grievants to represented by lawyers at

termination hearings constituted a violation of her due process rights, citing Goldberg v. Kelly, 397 U.S. 254 (1970); Board of Education v. Kennedy, 256 Ala. 478, 55 So.2d 511 (1951).

This issue was not preserved by any ruling below and is, therefore, not before us. We observe, however, that it is undisputed that Johnson's tenured status constituted a property interest which was terminable only in accordance with due process of law. Due process requirements are not fixed; they vary according to the circumstances. Determining the due process rights of a grievant in an administrative hearing requires weighing the importance of the

property right at stake and the possible value of any additional procedural safeguards against the government's interest in providing an efficient mechanism for determining the parties' rights. See Matthews v. Eldridge, 424 U.S. 319, 335 (1976); Goldberg v. Kelly, 397 U.S. 254 (1970). In this case we must weigh the value of legal counsel in protecting Johnson's reasonable expectations of future employment against the University's interest in having an efficient process of ridding itself of faculty members who are incompetent or who violate established rules and procedures.

The question of whether due process guarantees of the Fifth and Fourteenth Amendments afford the right to legal counsel in an administrative proceeding is not susceptible to a simple answer. See 3 Davis, Administrative Law Treatise, § 14:17 (1980); Annot., Right to Assistance by Counsel in Administrative Proceedings, 33 A.L.R.3d 229 (1970). For instance, a recipient of assistance under the Aid to Families with Dependent Children program is entitled to a hearing at which counsel must be allowed to appear on the recipient's behalf before the aid can be terminated. Goldberg v. Kelly, 397 U.S. 254, 270 (1970). On the other hand,

prison inmates do not have the right to be represented by counsel in prison disciplinary hearings. Baxter v. Palmigiano, 425 U.S. 308, 324-15 (1976); Wolff v. McDonnell, 418 U.S. 539,570 (1974).

The authority on the question of the right of college professors to counsel in termination hearings is scant. In Frumkin v. Board of Trustees, Kent State University, 626 F.2d 19 (6th Cir. 1980), the university allowed the professor to have an attorney present at the termination hearing but did not allow him to cross-examine witnesses or object to the introduction of evidence. His only role was to consult and advise his

client and to present a closing argument. In ruling that the procedure did not violate the grievant's due process rights, the court agreed with the university's argument that due process did not required it to conduce a full-fledged adversary trial." Since the university afforded the professor an ample opportunity to present his case to the hearing committee in a manner calculated to achieve a fair result, his due process rights were not violated. The case of Toney v. Reagan, 467 F.2d 953 (9th Dir. 1972), involved a non-tenured professor who claimed that he had been terminated as a result of the exercise of his First Amendment

rights. Although he was not tenured, the professor was entitled to a termination hearing under state law. Although the grievance procedure specifically excluded lawyers from the proceeding, the court ruled that, in the absence of a showing of a special need for a lawyer by the grievant, the procedure was adequate.

In addition to the protections of the United States Constitution, the Alabama Constitution of 1901, Art. I, §§ 6 and 13, provides that persons are not to be deprived of property rights except by due process of law. Several Alabama cases have considered questions regarding procedural due process in

administrative hearings, and there are dicta in some of those opinions from which an argument could be made for the proposition that under Alabama law the right to legal representation at administrative hearings is an incident to the right to due process. See Medical Services Administration v. Duke, 378 So.2d 685, 686 (Ala. 1979); Katz v. Alabama State Board of Medical Examiners, 351 So. 2d 890, 892 (Ala. 1977); Board of Education of Choctaw County v. Kennedy, 256 Ala. 478, 482, 55 So.2d 511, 514 (1951). The right to counsel was not at issue in those cases, however, so any language to the effect that there must be a right to counsel in

order for there to be minimal compliance with due process guarantees is dictum.

All that is necessary to satisfy minimal due process requirements is that a person in jeopardy of serious loss be given notice of the charges against him and that he be afforded a meaningful opportunity to present his case to a qualified, impartial decision maker. The judicial model of a full-blown evidentiary hearing is not always required. "All that is necessary is that the procedure be tailored, in light of the decision to be made, to 'the capacities and circumstances of those who are to be heard.'" Matthews v. Eldridge, 424 U.S. 319, 349 (1976),

quoting Goldberg v. Kelly, 397 U.S. at 268-69. In this case the University informed Johnson of the charges and of the names of adverse witnesses; it gave her an opportunity to object to any of the prospective panel members, to cross-examine adverse witnesses, and to present witnesses and evidence on her behalf. The only aspect of the procedure which arguably denied her a meaningful opportunity to present her case was the refusal to allow her to have legal representation. She did not, however, object to the absence of counsel prior to the hearing, and there is nothing in the record to indicate that she had any special need for

representation. For these reasons, we do not reach the question of whether due process required that a person be allowed legal representation if it is properly insisted upon. We agree with some of our sister states that college professors as a class are far less likely that welfare recipients, prison inmates, or other less educated person to require the services of an attorney in holding a fair hearing. WHile the right to counsel may exist under these facts, it does not appear that Johnson preserved the issue for review.

Following the hearing committee's finding of guilt and its recommendation of probation, the E.O.P. and the

president reviewed the case in order for the president to determine what course of action to take. In the course of reviewing the case, the president examined Johnson's personnel file and relied in part on the information in that file in deciding to terminate her. Johnson argues that the president of the University violated her due process rights by reviewing her personnel file. She argues that the president should not have been allowed to go beyond the record of the hearing in making his decision whether to terminate her or place her on probation.

The handbook provides that upon a determination of culpability by the

hearing committee the president will make a decision as to the action to be taken. Since the panel found Johnson guilty of offenses which constituted cause for her termination, the president was entitled at that point to terminate her if he had chosen to do so. Surely Johnson was not prejudiced by the president's action of reviewing her file before making a decision. With regard to the requisites of due process, it is not necessary in administrative proceeding that the decision maker consider only evidence which would be admissible in a court of law. It is sufficient to consider evidence that "reasonable men are accustomed to rely

on" in making rational decisions. Toney v. Reagan, supra, at 958. It stands to reason that the purpose of keeping personnel files is to provide information to be used in making decisions on employment matters such as this. Johnson had copies of most of the contents of the file and much of the file consisted of letters she had written and evaluation forms which contained her comments.

Finally, Johnson argues that the University was bound by the E.O.P.'s original decision placing her on probation and that since she did not violate the probation the president should not have terminated her.

Johnson's argument ignores the fact that she agreed to allow further hearings on the question of her status after the letter in question was sent. Implicit in her request to appear before the E.O.P. was a recognition that further hearings might result in a new decision by the president. Having sought relief from the original decision, she cannot now complain that a different decision was issued.

The trial court's judgment is hereby affirmed.

AFFIRMED.

Torbert, C. M., and Maddox, Jones, Shores, Adams, and Houston, JJ., concur.

Almon, J., concurs in the result.

OFFICE OF
CLERK OF THE SUPREME COURT
STATE OF ALABAMA
MONTGOMERY

Re: 84-194

DORIS JOHNSON vs.
Appellant

ALABAMA AGRICULTURAL & MECHANICAL UNIVERSITY, et al. Appellee

You are hereby notified that the following indicated action was taken in the above cause by the Supreme Court today:

XXXXX Application for rehearing overruled. No opinion written on rehearing.

/s/ Robert G. Esdale

Robert G. Esdale, Clerk

Supreme Court of Alabama

IN THE CIRCUIT COURT FOR MADISON COUNTY, ALABAMA

DORIS JOHNSON

Plaintiff

versus Civil Action CV 83-0631

ALABAMA AGRICULTURAL AND MECHANICAL UNIVERSITY et al

Defendants

FINAL JUDGMENT

Upon consideration of the pleadings, testimony presented in open court, and excellent briefs of the parties the Court is of the opinion that the relief sought by the plaintiff be, and the same is hereby, denied and this action is dismissed with costs taxed to the plaintiff.

This 30th day of October, 1984.

/s/ William D. Page
Circuit Judge

Joe Battle

Roscoe Roberts

AMENDMENT 14

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

IN THE CIRCUIT COURT OF MADISON COUNTY, ALABAMA

DORIS JOHNSON

Plaintiff

vs. Case No. 83-_____

ALABAMA AGRICULTURAL AND MECHANICAL UNIVERSITY, R.D. MORRISON as President of Alabama A & M University; The Board of Trustees of Alabama A & M University in their official capacity: JAMES W. COLEMAN, MAMIE L. FOSTER, ROBERT T. HUGHES, ELEANOR U. INGE, W. TROY MASSEY, JOSEPH C. MOQUIN, EDDIE G. PLAYER, FRANKIE FIELDS SMITH, SPENCER THOMAS, PAUL THOMPSON, PAUL DUDLEY WHITE and JEFFREY MARTIN

Defendants

COMPLAINT

1. Plaintiff, Doris Johnson, has been employed for 14 years by Alabama

Agricultural and Mechanical University (hereinafter Defendant University) and was at all times herein a tenured faculty member.

2. Defendant University is located at Normal, Madison County, Alabama and is governed by a Board of Trustees composed of the following named individuals (hereinafter referred to as Defendant Trustees): James W. Coleman, Mamie L. Foster, Robert T. Hughes, Eleanor U. Inge. W. Troy Massey, Joseph C. Moquin, Eddie G. Player, Frankie Fields Smith, Spencer Thomas, Paul Thompson, Paul Dudley White, and Jeffrey Martin.

3. The Defendant Trustees are empowered by the Code of Alabama, 1975, Section 16-49-23 "...to remove... instructors."

4. The Plaintiff, as a tenured faculty member, as a matter of contract law and as a matter of fair dealing, is entitled to due process pursuant to the Defendant University's Handbook. Such due process calls for the appointment of an impartial tribunal. Such tribunal makes a determination of culpability. If guilt is found, the tribunal advises the President of the University, Defendant R.D. Morrison, and recommends action to be taken, subject to the President's final decision.

5. The Plaintiff, as an employee of a State institution of higher education, the Defendant University, is entitled to due process of law pursuant to the Constitution of Alabama of 1901, Article I Sections 6 and 13 thereof and pursuant to the Fifth and Fourteenth Amendments of the U.S. Constitution. Due process is to include 1) advising the Plaintiff of the cause or causes for the action taken against her in sufficient detail to fairly enable her to show any error that may exist, 2) advising her of the names and the nature of the testimony of witnesses against her, 3) at a reasonable time after such such advice, giving her a meaningful

opportunity to be heard in her own defense, and 4) having the hearing before a tribunal that possesses some academic expertise and has an apparent impartiality toward the charges.

6. By letter date November 1, 1982, the Plaintiff was notified of charges and witnesses against her and given a hearing date and hearing panel. She was also advised that "...no legal representative is allowed during this administrative hearing."

7. A hearing scheduled for November 18, 1982, was continued to December 2, 1982. By a decision dated December 14, 1982, the hearing panel reviewed testimony from 21 witnesses

that was offered in 4 hours and 15 minutes. The Plaintiff represented herself at the hearing. The hearing panel concluded that the Plaintiff was insubordinate and disrespectful to her department Chairman, failed to follow approved procedures and was rude and uncooperative with several students. However, the panel recognized that the Plaintiff "...over the past fourteen years has made significant contribution to the Division of Home Economics" and that"...students... have held her in high esteem." Moreover, the panel found that the Plaintiff "...is active innumerous community activities and organizations and tend (sic) to work

hard for causes that she believes in." In addition, the panel stated that "We have no solid evidence to support academic incompetence...the (Plaintiff) is qualified in the areas in which she teaches." The panel concluded by stating that "...the major problem appears to be an inability of the part of the (Plaintiff) to recognize and solve the problem of cooperating and respecting those in authority as well as persons under her supervision. If she continues in this fashion, we strongly believe that the Division of Home Economics is entitled to relief."

8. On or about January 7, 1982, the Defendant University's Executive

Officers for Planning (hereinafter referred to as EOP) met concerning the Plaintiff's case. The EOP is not referred to in the Handbook's grievance procedure but states in the University Handbook that it is composed of the Defendant Morrison and the 3 Vice Presidents of the Defendant University. The EOP used Defendant Morrison's stationery in issuing a memorandum dated January 13, 1983. This memorandum states that the EOP "reviewed the case." The EOP stated that it "intends to provide the Division of Home Economics with relief." It concluded by placing the Plaintiff on "strict probation" "until further notice" concerning the

EOP's directive to immediately "cease and desist from all forms of behavior which held to the charges on which you have been found guilty." The EOP memorandum then stated that, "your continual service with Alabama A & M University will depend upon your supervisory evaluation in regard to your strict compliance with the above stipulations" and that "you will be dismissed...should any supervisory evaluation reach the Executive Officers for Planning through supervisory channels reflecting substantiation of any of the undesirable behavior in question...."

9. Thereafter, by letter dated January 24, 1983, the Plaintiff's Associate Dean, who had served as prosecutor at the panel's hearing, requested "...a hearing before the new Executive Officers for Planning to ask for a reconsideration of the recommendation rendered by that body." Apparently, such second hearing was held without the presence of the Plaintiff but before a newly constituted EOP which had a new and expanded membership.

10. By letter dated February 4, 1983, Defendant Morrison notified the Plaintiff that "...we are...deferring a decision on the severity of the action

to be taken;" and that "pending that decision, you are relieved of your duties and responsibilities in the Department of Home Economics with pay." The letter further stated that it "...takes the place of the communication dated January 13, 1983, addressed to you from the Executive Officers for Planning" and that "You will hear further from this office after due deliberation of pertinent factors."

11. By letter dated May 30, 1983, on the same President's stationery that the January 13, 1983, memorandum was written on the Plaintiff received notice that "...we are...making your

temporary suspension permanent..." and that "your separation is effective as of the 31st day of May, 1983."

12. The Code of Alabama, 1975, Section 16-49-23 was violated when the Defendant Morrison rather than the Defendant Trustees terminated the Plaintiff's employment.

13. The Plaintiff's due process rights were violated when she was denied the right to counsel at the December 2,1 982, hearing when outdated evidence was presented at said hearing and when facts were presented to the Defendant Morrison by the Plaintiff's Associate Dean outside of the presence of the Plaintiff. The Plaintiff's contract

right and right to fair dealing were violated when the Defendant Morrison violated the University's grievance procedure by making (as an EOP member) a final decision, and then as a member of a different EOP, and subsequently as an individual, making two other later decisions as to the Plaintiff's employment.

14. By reason of the acts and omissions of the Defendant University, the Defendant Morrison and the Defendant Trustees, the Plaintiff has suffered and will suffer irreparable injury, hardship, harm, loss of compensation and status as a tenured faculty member. Said Plaintiff has not plain, speedy or

adequate remedy except this action for declaratory and injunctive relief.

WHEREFORE, premises considered, Plaintiff prays that a hearing be held in this cause and that after such hearing the Court grant the following relief:

1. Enter a declaratory judgment, declaring that the Defendant Morrison has violated Code of Alabama, 1975, Section 16-49-23 by terminating the Plaintiff.

2. Enter a declaratory judgment, declaring that the Defendants have violated their own grievance procedure by allowing testimony outside of the hearing panel and outside of the

presence of the Plaintiff; and further violating such procedure by issuing through the Defendant Morrison (as a member of 2 different groups and as an individual) three (3) different decisions as to the Plaintiff's employment status.

3. Enter a judgment finding that the Plaintiff's due process rights were violated by the Defendants when the Plaintiff was not allowed counsel at her hearing, when improper evidence was presented at said hearing and when the Plaintiff's associate Dean presented evidence outside of the Plaintiff's presence.

4. Enter mandatory, preliminary and permanent injunctions requiring the named Defendants to reinstate the Plaintiff to the position she held with the Defendant University as of May 31, 1983, with all of the backpay, pay, allowances, supplements, rights to tenure, retirement benefits and other entitlements and emoluments flowing therefrom.

5. Enter an order granting the Plaintiff her costs in this action.

6. Enter an order granting such other, further and different relief as the Court may deem appropriate in the premises.

/s/ Doris Johnson
Doris Johnson

/s/ Joseph L. Battle
Joseph L. Battle
Attorney for Plaintiff
215 Randolph Avenue SE
Huntsville, Alabama 35801
Telephone: 534-8478

STATE OF ALABAMA)

COUNTY OF MADISON)

Personally appeared before me the undersigned Notary Public in and for said State and County, Doris Johnson, who is known to me and who, first being duly sworn, deposes and says that the matters averred in the Complaint are true and correct as therein stated to the best of her knowledge and beliefs.

Sworn to and subscribed before me this the 14th day of June, 1983.

/s/ Joseph L. Battle
Notary Public